

TRANSCRIPT OF PROCEEDINGS

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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In the Matter of:

David L. Titus

EB Docket No. 07-13

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

IN THE MATTER OF: :
 :
DAVID L. TITUS : EB Docket No. 07-13
 :
Application to Renew :
License for Amateur : FRN No. 0002074797
Radio Service Station :
KB7ILD :
 :

Wednesday,
July 16, 2008

VOLUME VIII

The above-entitled matter came on for hearing, pursuant to notice, at 9:30 a.m.

BEFORE:

THE HONORABLE RICHARD L. SIPPEL
Administrative Law Judge

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Titus

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1 P-R-O-C-E-E-D-I-N-G-S

2 9:34 a.m.

3 JUDGE SIPPEL: We're on the
4 record. We're ready to proceed. It's almost
5 9:30. Good morning, Mr. Titus. You're with
6 us, right? You can hear me all right?

7 MR. TITUS: Yes, good morning.

8 JUDGE SIPPEL: Okay. Yes, sir?

9 MR. LYON: As a preliminary
10 matter, your Honor, I'd like to have marked as
11 Exhibit 15 a document that has previously been
12 supplied to the reporter and to counsel and to
13 you. It is the minute notes from the clerk on
14 Mr. Titus' parole or probation violations
15 hearing, and it looks like it's dated, the
16 hearing was dated October 25th, 1996. And I
17 move Exhibit 15 into evidence.

18 (Whereupon, the above-referred to
19 document was marked as Titus
20 Exhibit No. 15 for
21 identification.)

22 JUDGE SIPPEL: Has a copy been

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1 provided to Bureau counsel?

2 MR. KNOWLES-KELLETT: Yes, it has,
3 your Honor.

4 JUDGE SIPPEL: May I see a copy,
5 please?

6 MR. LYON: Did I not give you a
7 copy, your Honor?

8 JUDGE SIPPEL: Well, let me double
9 check. Maybe you did. Yes, you did. I take
10 that back. Yes, this is a one-page document,
11 Superior Court of Washington for Benton
12 County? Titus Exhibit 15 for identification.
13 Is there any objection?

14 MR. KNOWLES-KELLETT: Your Honor,
15 there's nothing on this document, counsel can
16 tell us, there's nothing that ties it to the
17 parole notification other than it's David
18 Titus and it talks about his parole officer.
19 We don't know that this has anything to do
20 with the parole notice of violation in
21 evidence, so we're not sure what probative
22 value this is.

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1 MR. LYON: Your Honor, could I --

2 JUDGE SIPPEL: Yes, I'm going to
3 ask you to respond certainly, but refresh my
4 recollection: what does this 15 relate to?
5 This is the completion of another --

6 MR. LYON: Yes.

7 JUDGE SIPPEL: -- isn't that
8 correct?

9 MR. LYON: In the last pages of
10 Exhibit 41, and I'll give you the --

11 JUDGE SIPPEL: That would be your
12 Exhibit 41, is that right?

13 MR. LYON: I'm sorry. Bureau
14 Exhibit 4, pages 42 through 45, is a notice of
15 violation or at least a report concerning a
16 notice of violation where it indicates that a
17 non-compliance hearing was to be scheduled.
18 It's dated August 8th, 1996.

19 JUDGE SIPPEL: All right. And
20 you're proffering this as a continuation of
21 that exhibit?

22 MR. LYON: Yes, as a resolution of

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1 that violation hearing where the court
2 dismissed the State's motion.

3 JUDGE SIPPEL: Where is it
4 reflected it's been dismissed?

5 MR. LYON: Right at the bottom,
6 your Honor, where it says, "J denies State's
7 motion."

8 JUDGE SIPPEL: J denies State's
9 motion.

10 MR. LYON: I'm told that there is
11 no separate order that dismisses the
12 proceeding. It was done orally, and these are
13 the clerk's notes. This is a document I will
14 represent that Mr. Titus obtained from the
15 clerk of the Benton County Circuit Court. If
16 there's any question as to its validity, then
17 Mr. Titus is prepared to testify as to that
18 when he testifies later on this morning.

19 JUDGE SIPPEL: Let me just a
20 little voir dire. Do you have a copy of this
21 document in front of you, Mr. Titus?

22 MR. TITUS: I believe I do.

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1 JUDGE SIPPEL: Well, let's get --

2 MR. TITUS: Oh, no, I do not have
3 that document yet.

4 JUDGE SIPPEL: You don't have it?
5 But didn't you give it to counsel yesterday?

6 MR. TITUS: I have the Benton
7 County Court fax it directly to you guys
8 yesterday morning. That's why I asked for
9 that fax number.

10 JUDGE SIPPEL: Well, I'm asking
11 you, the document itself is a one-page
12 document.

13 MR. TITUS: Right.

14 JUDGE SIPPEL: You don't have it -
15 -

16 MR. TITUS: No, I don't have a
17 copy of that. That was faxed directly to you
18 guys, and I haven't received a copy yet.

19 JUDGE SIPPEL: Well, if you faxed,
20 in the normal course of events, the copy comes
21 to you. Whoever sends the fax gets the -- no?

22 MR. KNOWLES-KELLETT: He asked the

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1 clerk to fax it from the clerk's office to us.

2 JUDGE SIPPEL: Did you hear that,
3 Mr. Titus?

4 MR. KNOWLES-KELLETT: That's what
5 he just said.

6 JUDGE SIPPEL: Oh, you did just
7 say that?

8 MR. TITUS: Right.

9 JUDGE SIPPEL: You had nothing to
10 do with the fax? It was done in another, in
11 the court's facility, the clerk's facility; is
12 that correct?

13 MR. TITUS: Yes. I e-mailed the
14 clerk, and the clerk told me about the
15 minutes, and I asked the clerk in Benton
16 County if she could fax those to the fax
17 number that you guys provided yesterday.

18 JUDGE SIPPEL: Okay. All right.
19 Well, then the answer is that we're going to
20 have to fax you a copy so that you can have it
21 in front of you so that we can ask some
22 questions about it.

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1 MR. TITUS: Okay.

2 JUDGE SIPPEL: So we'll just pass
3 over that for the time being. I'll leave it
4 pending as an identified exhibit. But is
5 there somebody can arrange for a fax to him?

6 MR. KNOWLES-KELLETT: If you
7 would, Mr. Titus, ask for their fax number
8 and, at a break, we'll take care of faxing it
9 to you.

10 MR. TITUS: Okay.

11 MR. LYON: And, Bill, do you mind
12 faxing it to him? My copy is still cut off on
13 the bottom. You guys have the good copy.

14 MS. LANCASTER: Yes, we can fax it
15 to him.

16 MR. LYON: All right.

17 JUDGE SIPPEL: Do you want to use
18 my copy? Do you have a clean copy?

19 MS. LANCASTER: We have a copy,
20 your Honor. As a preliminary matter, Mr.
21 Titus, can you lower the view of the camera
22 just a little bit? We're seeing a lot of wall

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1 above your head and less of you. Keep going.

2 MR. TITUS: Yes, I don't see any
3 of you guys.

4 MS. LANCASTER: Well, we can't
5 zoom out anymore, but the Judge is the only
6 important person here.

7 JUDGE SIPPEL: Oh, no, the
8 reporter is the most important person here.

9 MR. TITUS: Well, I should be able
10 to see the witness testifying --

11 JUDGE SIPPEL: That's very true.
12 You should be able to see the witness testify.

13 MS. LANCASTER: You can move it
14 back some, but the problem with that is I just
15 want to make sure the Judge can see the TV
16 when --

17 JUDGE SIPPEL: I can see it.

18 MR. TITUS: That's perfect.

19 JUDGE SIPPEL: That's good?

20 MR. TITUS: Yes, that's good.

21 Thank you. I can see both of you.

22 JUDGE SIPPEL: All right, that's

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1 fine. I mean, two is better than one. Now,
2 what about the Titus Exhibit 14? Did that get
3 moved in yesterday?

4 MS. LANCASTER: I was going to ask
5 that it be moved in today, your Honor, and
6 also ask that exhibit, you told us to wait
7 until this morning to do that.

8 JUDGE SIPPEL: Right. I didn't
9 want to do anything yesterday that was going
10 to tie up the witness.

11 MS. LANCASTER: Most of Exhibit
12 14, EB 14 has already been moved into
13 evidence, so just a few pages of it that you
14 had not moved, you had not accepted into
15 evidence, except for for all purposes.

16 JUDGE SIPPEL: Hold on just a
17 second. Titus 14.

18 MS. LANCASTER: Oh, you're -- I'm
19 sorry.

20 JUDGE SIPPEL: It's a one-page
21 document on the Superior Court State of
22 Washington. This is the one that returns

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1 civil rights to Mr. Titus, with the exception
2 of gun bearing or gun having or gun whatever
3 possession.

4 MR. LYON: If I haven't moved it
5 into evidence, your Honor, I do move it into
6 evidence.

7 JUDGE SIPPEL: Very well. Well,
8 let's identify it. We may have done this, but
9 let's be sure we got this covered. What is
10 this document?

11 MR. LYON: I request that Titus
12 Exhibit 14 be marked into evidence. It's a
13 one-page document, an order from the Superior
14 Court of Benton County State of Washington
15 which restores Mr. Titus' civil rights. It's
16 called a Certificate and Order of Discharge.

17 JUDGE SIPPEL: Yes, I have it.

18 MR. LYON: The document speaks for
19 itself, but, essentially, it restores his
20 civil rights, except for the right to possess
21 and bear fire arms.

22 (Whereupon, the above-referred to

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1 document was marked as Titus
2 Exhibit No. 14 for
3 identification.)

4 JUDGE SIPPEL: Very well. It's
5 dated June 12, 2002.

6 MS. LANCASTER: I don't have a
7 copy of that. Do you have another copy? It's
8 not in my notebook.

9 MR. KNOWLES-KELLETT: I know you
10 e-mailed it but --

11 JUDGE SIPPEL: Would you like to
12 see my copy, and then we can move it in?

13 MR. LYON: I will make a copy.
14 Unfortunately, I left my home this morning
15 without my key to my office here, and so I'll
16 have to make a copy at the copy center in the
17 courtyard.

18 MS. LANCASTER: I don't have any
19 problem with it.

20 JUDGE SIPPEL: All right.

21 MS. LANCASTER: Just give it to
22 me, George. I'll make a copy when I --

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1 JUDGE SIPPEL: Let me rule on
2 this, please.

3 MR. LYON: I move --

4 JUDGE SIPPEL: Wait a minute -- go
5 ahead. Do you want to --

6 MR. LYON: I move Exhibit 14 into
7 evidence, your Honor.

8 JUDGE SIPPEL: Exhibit 14, as
9 identified, the one-page document from the
10 Superior Court, Certificate and Order of
11 Discharge, is received in evidence at this
12 time.

13 (Whereupon, Titus Exhibit No. 14
14 was received into evidence.)

15 JUDGE SIPPEL: Now, go off the
16 record for just a minute.

17 (Whereupon, the foregoing matter
18 went off the record at 9:44 a.m. and went back
19 on the record at 9:46 a.m.)

20 JUDGE SIPPEL: We're back on the
21 record. Ms. Lancaster?

22 MS. LANCASTER: Yes, sir. Your

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1 Honor, based on the testimony of Mr. Schurman
2 yesterday regarding EB Exhibit 8, which is the
3 letter to Senator Cantwell --

4 JUDGE SIPPEL: Yes.

5 MS. LANCASTER: -- Mr. Schurman's
6 testimony confirms and validates the comments
7 in this letter. He was a part of drafting the
8 letter. He participated in the drafting of
9 the letter, and I would ask that this be moved
10 into evidence for all purposes. It's already
11 into evidence, I believe, but right now it's
12 only for notice purposes, and I would ask that
13 it be accepted for all purposes.

14 JUDGE SIPPEL: Any objection?

15 MR. LYON: Yes, your Honor. The
16 operative paragraph, which is the last
17 paragraph of the first page, is completely
18 opinion. I don't think it's appropriate to be
19 moved into evidence. Mr. Schurman testified
20 yesterday extensively concerning his concerns
21 with respect to Mr. Titus, and the record will
22 reflect whatever it reflects. But I don't

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1 think that this is the type of material that
2 is appropriate in the record. I think it's
3 prejudicial, and I think that it should not be
4 relied upon for the proof of the matter as
5 asserted.

6 JUDGE SIPPEL: Well, it will be,
7 certainly all of the, if any, deficiencies or
8 weaknesses in the document will be considered
9 in terms of connection with the weight to be
10 given it, if any. But the witness was on the
11 stand. He had the document in front of him,
12 and everybody had a chance to question him and
13 you had a chance to cross examine him. I
14 don't see anything in there that's
15 outrageously prejudicial. You're correct, it
16 does get into opinion areas that certainly are
17 subject to objection and are questionable.
18 But, again, I think it's more to the weight
19 but not as to the receipt of the document.

20 So I'm going to overrule the
21 objection. I'm going to receive it into
22 evidence for all purposes, but, I mean, I'm

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1 just going to, in candor, I'm just going to
2 note for the record that it does have some
3 deficiencies to it as a reliable piece of
4 evidence for, as you say, for the truth of
5 what it seeks to assert in that ultimate
6 paragraph on the bottom of page one.

7 (Whereupon, Government Exhibit No.
8 was received into evidence.)

9 MS. LANCASTER: Your Honor, also--

10 JUDGE SIPPEL: Are you satisfied
11 with that?

12 MS. LANCASTER: Yes, sir.

13 JUDGE SIPPEL: Good. Let's go.
14 What's next?

15 MS. LANCASTER: Also, as to EB
16 Exhibit 4, pages one and two, which I don't
17 believe were previously accepted into evidence
18 for all purposes, this was reviewed with Mr.
19 Titus yesterday, and he did not refute the
20 accuracy of the information in this document.
21 And I would ask that it be accepted into
22 evidence for all purposes. Right now, I

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1 believe it's only accepted for notice
2 purposes.

3 MR. LYON: Your Honor, I continue
4 to object on that document on best evidence
5 grounds. The underlying adjudication and, in
6 one case, conviction are in the record. I
7 think that for reliance purposes, those should
8 be the documents that are in the record for
9 the truth of the matter as asserted, not a
10 compilation.

11 JUDGE SIPPEL: Well, it does have
12 the weaknesses that you point out. You
13 continue to point those weaknesses out, but it
14 is in the form of a business document,
15 business exception, records exception. And
16 there was enough availability of testimony
17 through Mr. Schurman and Mr. Titus --

18 MR. LYON: I'm sorry. Mr.
19 Schurman?

20 JUDGE SIPPEL: Didn't he testify
21 to this?

22 MS. LANCASTER: No, Mr. Titus

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1 testified regarding this document, your Honor.

2 JUDGE SIPPEL: I'm sorry. Mr.
3 Titus, that's correct. I thought maybe this
4 was something -- never mind. Anyway, I think
5 that there's been enough opportunity to
6 question the document. Questions have
7 certainly been raised with respect to it. I'm
8 disinclined to, obviously, to give much weight
9 or even attention to conclusions, as opposed
10 to facts, that are in a document such as this.
11 But as part of the case, for what it's worth,
12 I'm going to let it in. So it's in. It's in
13 evidence for all purposes.

14 (Whereupon, Government Exhibit No.
15 4 was received into evidence.)

16 MS. LANCASTER: Thank you, your
17 Honor.

18 JUDGE SIPPEL: But, please, if
19 there's better evidence in there, don't spend
20 a lot of time with this one, please. Okay.
21 Let's go. Is that it now?

22 MS. LANCASTER: Yes, sir.

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1 JUDGE SIPPEL: The Bureau is all
2 set? Okay. Then Mr. Lyon, you're up.

3 CROSS EXAMINATION (Cont'd)

4 BY MR. LYON:

5 Q All right. Detective Shilling, we
6 touched on this issue yesterday, but I'm not
7 sure that the record accurately reflects one
8 point. In discussing the new federal
9 guidelines which the State of Washington has
10 not adopted, I think you indicated that you
11 oppose their adoption by the State of
12 Washington; is that correct?

13 A That's correct.

14 Q Okay. And would you state for the
15 record why you oppose the adoption of those
16 new guidelines?

17 A The major reason, because they go
18 retroactively back and capture people who have
19 not had to register under Washington state law
20 because our law went into effect February 28th
21 of 1990. So anyone on or after that date has
22 to register. The Adam Walsh Act will require

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1 people to register who have been convicted of
2 sex crimes prior to 1990, I mean all the way
3 to the 40s, 50s, or 60s. Plus, it gives them
4 a tier level based on their crime of
5 conviction, not any type of risk assessment.

6 Q When you say crime of conviction,
7 could you explain that in more detail?

8 A For any crime, any sex crime that
9 they were convicted or adjudicated of they
10 would be assigned a tier level based on
11 whatever it was that the court found that they
12 were convicted of. Many times, there's a plea
13 agreement, so what they may be charged with
14 isn't necessarily what they're actually, you
15 know, convicted of. So it would be the crime
16 of conviction or adjudication.

17 Q Okay. So if I understand your
18 testimony correctly, I guess there's a list of
19 level-one crimes and a list of level-two
20 crimes and a list of level-three crimes?

21 A Yes.

22 JUDGE SIPPEL: I'm just going to

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1 say somebody should probably put that into
2 evidence as a, which would, you know, come in
3 by way of official notice. But let's
4 continue. I just want to make a mental note
5 of that.

6 MR. LYON: If that is going to go
7 into evidence via official notice, your Honor,
8 I would like to have a copy of it before I
9 conclude my examination of Detective Shilling.

10 JUDGE SIPPEL: Can we do that?
11 All right. Go ahead. You may continue.

12 BY MR. LYON:

13 Q Detective Shilling, I think you
14 mentioned the Washington State, I have it here
15 as a WSPPI.

16 A Washington State Institute for
17 Public Policy.

18 Q That's it. And I think you
19 mentioned that they have done some reviews of
20 the sex offender laws of the state of
21 Washington?

22 A They have.

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1 Q And they've issued reports?

2 A Yes, they have.

3 Q And you've reviewed those reports?

4 A I reviewed many of them, yes.

5 Q Okay. Are there any that you
6 haven't reviewed?

7 A Oh, sure.

8 Q Do you know which ones?

9 A Most of the ones on sex offenders
10 I've reviewed. They have reports on all kinds
11 of different items of concern to the
12 legislature.

13 Q And I'm sorry. My question must
14 have been unclear. My question really was
15 directed to the sex offender reports of the
16 Washington Public Policy Institute. You've
17 reviewed those?

18 A I have. I've read them at least
19 once.

20 Q Okay. You currently classify Mr.
21 Titus as a level-three sex offender?

22 A Yes, sir.

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